

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable / Not reportable

Case no. **2153/2017**

In the matter between:

G. S. M[...] obo O. K.

Plaintiff

and

Defendant

ROAD ACCIDENT FUND

Neutral citation: *G S M[...] obo O K M[...] v Road Accident Fund (2153/2017)*

Coram: **Manye AJ**

Heard: **3 May 2024**

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be **10h00 on 06 February 2025**.

ORDER

1. The plaintiff is awarded general damages in the sum of R800 000.00

2. All the remaining heads of damages shall be determined at a later date.
3. An appointment of curator *ad litem* to administer the affairs on behalf of the minor child
4. The defendant is liable to pay the plaintiff's taxed or agreed party and party costs which costs shall include all the reasonable qualifying fees for plaintiff's experts of all medico-legal reports and plaintiff's attorney's attendance to all medico-legal assessments after the previous court order of 2018.
5. Costs of counsel up to 12 April 2024.
6. Costs of counsel as from 12 April 2024 to stand over for later adjudication.

JUDGMENT

Manye AJ

[1] The plaintiff in her representative capacity as the mother and natural guardian of O[...] K[...] M[...] (hereinafter referred to as '*the minor*'), is suing the defendant for injuries sustained following a motor vehicle accident that occurred on 7 September 2014.

[2] At the commencement of the trial, counsel for both parties informed the court that merits were settled as per the court order dated 27 March 2018, wherein the defendant was found to be liable for 100% of the plaintiff's proven or agreed damages.

[3] The only issue in this court is the adjudication of general damages only and all outstanding issues were to be postponed to be adjudicated at a later date.

[4] The plaintiff moved for an application for an amendment of the particulars of claim relating to the quantum in respect of general damages to be amended from R650 000.00 to R900 000.00. The defendant elected not to oppose the application for the amendment and as such the application for amendment was granted.

[5] The parties by agreement further requested this Court to accept the experts' reports only in relation to general damages in terms of rule 38 on general damages and not any other issues. The following reports were admitted in evidence:

- i. Dr L F Oelofse (Orthopaedic Surgeon) dated 7 June 2017;
- ii. Dr D K Mutyaba (Neurosurgeon) dated 20 June 2019;
- iii. Dr D F Hoffman (Plastic Surgeon) dated 5 July 2017 and RAF4 dated 05 July 2017; and
- iv. Dr J Mbhele (Clinical Psychologist) dated 20 June 2019.

[6] The parties further elected to close their respective cases in respect general damages. The parties agreed to file heads of argument with the defendant file its heads on 9 May 2024 and the plaintiff to file on 9 July 2024.

[7] It is trite that the plaintiff bears the onus and the only evidence presented in *casu* was that of the plaintiff's experts. At the beginning of the trial, counsel for plaintiff submitted that the reports accepted into the record and specifically the facts, assumptions and opinions expressed by the experts as notice of which were furnished, in terms of rule 36(9)(b) of the Uniform Rules of Court, be admitted into evidence in terms of rule 38(2) including factual findings, opinions, and collateral information obtained. Further, that the evidence of the aforesaid experts as contained in their respective affidavits, be admitted as evidence in terms of s 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988, as far as this relates to general damages only.

[8] The plaintiff claims the following heads of damages:

i.	Past medical and hospital expenses	R 67 103.24
ii.	Estimated future medical treatment in terms of Section 17(4)(a) undertaking	
iii.	Estimated future loss of income	R3 171 355.00
iv.	General damages	<u>R 900 000.00</u>
	TOTAL	<u>R4 138 458.24</u>

[9] As already indicated above the only issue to be determined by this Court is the amount of general damages. It is not in dispute that the plaintiff is entitled to general

damages, however the parties are in disagreement with regard to the amount of damages to be awarded.

[10] Plaintiff's counsel Mr Marx addressed the Court in the following respects:

- i. That the patient complained of headaches and had sustained lacerations.
- ii. That the patient complained of pain in the upper leg, upper arm, and multiple lacerations.
- iii. That the X-rays were ordered for the patient and the accident report confirmed right femur fracture and multiple pelvic fractures.
- iv. That On the 8th July 2014 the patient was transferred to Mediclinic and was taken into the theatre on the same date. The leg was opened and inserted with plates and screws to attach the femur. The patient was admitted to the ICU for a week.
- v. On the 14th July 2014 the patient was transferred to the general ward for a couple of weeks and eighteen (18) months after the surgery the inserted hardware was removed.

[11] Dr Oelofse identified the following current symptoms:

- i. Persistent headaches at least three (3) times per week;
- ii. Occasional nose bleeds.
- iii. The patient attempts to hide scarring on the forehead when in public.
- iv. The patient experiences no episodes of seizures.

[12] On further diagnosis of seizures, Dr Oelofse also referred to the neurosurgeon's expert opinion. Furthermore, it became clear that the femur healed well within three weeks but the patient could not walk around without assistance for a period of two months.

[13] The second operation was ordered to remove the instruments inserted and the healing of the wounds took two weeks while the scarring marks remained visible. The patient was left with a left leg having shortened by 0.5 cm.

[14] Dr Hoffman (plastic surgeon) dealt with damages for disfigurement and scarring over the forehead of approximately 7cm x 2cm and approximately 4cm x 5cm over the left eyebrow. Over the occiput, scarring of 2cm x 5cm was evident and scarring of 15cm x 5mm over the right femur. Lastly, approximately 2cm x 2cm scarring was evident over the back left flank.

[15] Dr K Mutyaba (Neurosurgeon) confirmed that the patient was 2 years old at the time of the accident.

- i. Based on the information and the interaction he had with the patient it was evident that the patient suffered a mild traumatic brain injury (TBI) as a result of the accident of 7 September 2014.
- ii. The evidence for the conclusion that the patient suffered a traumatic brain injury is founded on the results of looking at a mechanism of the injury and presentation with a large frontal scalp laceration that required washout and suturing.
- iii. Radiological investigations (CT scan) of the brain did not avail to him. However, note must be taken that a normal brain scan does not rule out concussion. He further concluded that the patient's age gave a much higher chance of a head injury compared to adults due to the size of the head relative to the body.

[16] The neuropsychologist, Dr Mbhele, assessed the patient and commented thereon as follows:

- i. The patient had normal upbringing and the family structure facilitated four children's education. The patient's brother completed his matric and his father and mother had both completed matric.
- ii. The father furthered his studies in mechanical engineering as a professional mechanic. He further observed that the patient's pre-morbid functioning and family background suggests that his brain development trajectory was on the right course and showed no signs of early disturbances.

iii. The patient was diagnosed with mild neuro-cognitive disorder, due to the mild TBI with behavioural disturbances, as well as post-traumatic stress disorder (PTSD) and, most differential, attention deficit hyper disorder (ADHD). Further ongoing evaluations were recommended.

[17] Mrs Gouws for the defendant addressed the court and indicated that the plaintiff's claim rests on a fracture of the femur, mild ADHD and scarring. She also indicated that the orthopaedic surgeon did not make any findings related to that of a pelvic fracture. However, she conceded that the disfigurement had been diagnosed, as well as the head injury. She recommended physiotherapy for the near future and that some scarring may be improved by reconstructive surgery.

[18] She submitted that doctor Mbhele generally stated that it was difficult to examine the plaintiff as the child is a busy boy. She concluded by submitting that in the assessment for general damages for femur, mild brain injury and scarring, compensation at R650 000.00 was fair and reasonable in the circumstances of this case. Lastly, she concluded by stating that the rest of the remaining issues ought to be decided at the trial on a later date.

[19] The plaintiff's mother, Mrs S[...] M[...], testified that she is the biological mother of the child. She had consulted with the lawyers for the protection and management of the monies that may be awarded to the plaintiff in general damages.

[20] She stated that she harbours concerns with the monies being paid into the attorney's trust account as her experience is that the money goes missing and ends up not working for the person it is intended for. She also submitted that she and her husband are working, as well as the patient's brother, and as such are not in need of the amounts awarded in terms of the general damages for patient, but that she would nevertheless want the money to be deposited into her accounts. She admitted that she did not have any experience in managing a trust account.

[21] Mrs Gouws took issue with the proposition that the money to be awarded be paid into the mother's account, and moved an application for a curator *ad litem* to be

appointed on behalf of the minor who will advise how the money ought to be dealt with in the most appropriate manner.

[22] I was referred to various comparable decisions for determination of appropriate amounts to be awarded. Relying on the said authorities, the plaintiff contends that the amount for general damages to be set at R900 000.00 whereas the defendant submits that the amount should be R650 000.00.

[23] I am not persuaded by the plaintiff's contention that an amount of R900 000.00 is consummate to the damages sustained by the Plaintiff. The amount that I consider to be fair and equitable under these circumstances is the amount of R800 000.00.

Order:

The following order is made:

1. The plaintiff is awarded general damages in the sum of R800 000.00
2. All the remaining heads of damages shall be determined at a later date.
3. An appointment of curator *ad litem* to administer the affairs on behalf of the minor child
4. The defendant is liable to pay the plaintiff's taxed or agreed party and party costs which costs shall include all the reasonable qualifying fees for plaintiff's experts of all medico-legal reports and plaintiff's attorney's attendance to all medico-legal assessments after the previous court order of 2018.
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T.L. MANYE, AJ

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